



COMMONWEALTH of VIRGINIA

DEPARTMENT OF ENVIRONMENTAL QUALITY

L. Preston Bryant, Jr.
Secretary of Natural Resources

NORTHERN VIRGINIA REGIONAL OFFICE
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David K. Paylor
Director

~~Jeffery A. Steers~~
Regional Director

STATE AIR POLLUTION CONTROL BOARD ENFORCEMENT ACTION

ORDER BY CONSENT

ISSUED TO

VIRGINIA PAVING COMPANY

DEQ Registration No. 70579

RECEIVED

APR 09 2008

VA DEQ - NRO

SECTION A: Purpose

This is a Consent Order issued under the authority of Va. Code §§ 10.1-1316.C, 10.1-1307.D, and 10.1-1309, between the State Air Pollution Control Board (SAPCB) and Virginia Paving Company for the purpose of resolving certain alleged violations of the air permits and regulations as specified in SECTION C of this Order.

SECTION B: Definitions

Unless the context clearly indicates otherwise, the following words and terms have the meaning assigned to them below:

1. "Va. Code" means the Code of Virginia (1950), as amended.
2. "Board" means the State Air Pollution Control Board, a permanent collegial body of the Commonwealth of Virginia as described in VA Code §§ 10.1-1301 and 10.1-1184.
3. "Department" or "DEQ" means the Department of Environmental Quality, an agency of the Commonwealth of Virginia as described in Va. Code § 10.1-1183.
4. "Director" means the Director of the Department of Environmental Quality.
5. "Order" means this document, also known as a Consent Order.

6. "NRO" means the Northern Regional Office of DEQ, located in Woodbridge, Virginia.
7. "Regulations" refers to the Regulations for the Control and Abatement of Air Pollution for the Commonwealth of Virginia.
8. "VAC" means Virginia Administrative Code.
9. "Virginia Paving" means Virginia Paving Company, a company certified to do business in Virginia, and its affiliates, partners, subsidiaries, and parents. Virginia Paving is the owner and operator of the Alexandria Plant which is located at 5601 Courtney Avenue in Alexandria, Virginia.
10. "NOV" means Notice of Violation.
11. "NOx" means Oxides of Nitrogen.
12. "VOCs" means Volatile Organic Compounds.

SECTION C: Findings of Fact

1. Virginia Paving Company is a division of Lane Construction Corporation and consists of three branch offices which manage eight asphalt production facilities.
2. The Virginia Paving Company's Alexandria Plant ("Plant"), which is the subject of this order, is an asphalt concrete plant that was purchased by Lane Construction Corporation in 2001. It is located at 5601 Courtney Avenue in Alexandria, Virginia, and is permitted by DEQ under Registration Number 70579. The plant consists of 2 asphalt concrete production units.
3. Prior to conducting the stack testing described in Paragraph 4 below, Virginia Paving was operating under a Minor New Source Review Permit issued by DEQ on March 19, 2004.
4. Virginia Paving hired an environmental consultant to conduct stack tests on asphalt production Units 1 and 2 at Virginia Paving's Alexandria Plant from August 25, through August 27, 2004. This stack testing was conducted to collect emission rate data for the purpose of modifying their existing March 19, 2004 Minor New Source Review Permit.
5. Virginia Paving used the emission data from the stack testing in an application for a modification to its March 19, 2004 Minor New Source Review Permit. Virginia Paving submitted this application on September 20, 2004. Virginia Paving sought the permit modification in order to increase the production capacity limits for the Alexandria plant.

6. DEQ-NRO issued a modified Minor New Source Review Permit the Plant on February 17, 2005 ("2005 Permit"). The 2005 Permit increased annual production limits and established emission limits based on the stack test data submitted in the September 20, 2004 permit modification application. The 2005 Permit was again modified in 2006.
7. On January 11, 2007, DEQ-NRO received a request from Virginia Paving that their current New Source Review Permit be modified so that the existing aggregate dryer on Plant 1 could be replaced with a Hauck Eco Star II, Low NOx Burner at the Alexandria Plant. The City of Alexandria had required this equipment to be installed as part of a Special Use Permit issued to the Plant by the City.
8. DEQ-NRO sent correspondence to a Virginia Paving representative on January 19, 2007, stating that DEQ-NRO had completed initial review of the facility's request and had determined that the proposed modifications would be subject to the permitting requirements of Chapter 80, Article 6 of the Commonwealth of Virginia Regulations for the Control and Abatement of Air Pollution. DEQ-NRO also requested additional information from Virginia Paving in Form 7 format.
9. DEQ-NRO continued to correspond with Virginia Paving regarding the appropriate permitting process, until Virginia Paving received a draft New Source Review Permit in May of 2007.
10. Prompted by citizen comments presented at the May 23, 2007, Virginia State Air Pollution Control Board meeting, DEQ-NRO conducted a comprehensive review of DEQ's source files, DEQ's Comprehensive Environmental Database System for Virginia Paving's Alexandria plant, and the stack test data submitted by Virginia Paving in connection with the 2004 permit modification application. DEQ-NRO staff conducted this comprehensive review on June 7, 2007 and determined that the stack test results submitted by Virginia Paving, and the emission calculations based on those stack test results were in error due to the incorporation of incorrect stack dimensions and transposed field data by the consultant that completed the stack testing.
11. Upon request by DEQ-NRO, and in order to obtain more accurate emissions data, Virginia Paving conducted additional stack testing at the Alexandria plant from August 28, 2007, to August 31, 2007, and September 12, 2007, to September 14, 2007. The 2007 stack test data indicated that Virginia Paving exceeded the emission limits set forth in its 2006 Amended Permit for NOx at Units 1 and 2, VOCs at Units 1 and 2 and CO at Unit 2.
12. Virginia Paving notified DEQ-NRO on December 6, 2007, that it had installed a Hauck Eco Star II, Low NOx Burner on Plant 1 in March of 2007. The

installation occurred without first obtaining the required Permit to Modify and Operate.

13. DEQ issued an NOV to Virginia Paving on January 16, 2008. The NOV cited the following alleged violations:
- Violation of 9 VAC 5-80-1150(B) and 9 VAC 5-20-230 for submitting incorrect stack test data to DEQ after having certified that the stack test results were prepared by a consultant under Virginia Paving's direction and in accordance with a system designed to assure that qualified personnel properly gathered and evaluated the information submitted to DEQ-NRO.
 - Violation of 9 VAC 5-50-260 and Condition 17 of the facility's Amended Permit to Modify and Operate, dated July 20, 2006, for exceeding short term emission limits from the operation of the drum dryers for Nitrogen Oxides on Units 1 and 2, Carbon Monoxide on Unit 2, and Volatile Organic Compounds on Units 1 and 2.
 - Violation of 9 VAC 5-50-390, 9 VAC 5-80-1210, Condition 1 of the facility's Amended Permit to Modify and Operate, dated July 20, 2006, and 9 VAC 5-80-1120(A) for installing a Low NOx Burner without first obtaining a Virginia State Permit to Modify and Operate.

SECTION D: Agreement and Order

Accordingly, the Board, by virtue of the authority granted it in Va. Code § 10.1-1316(C), orders Virginia Paving Company, and Virginia Paving Company agrees, to comply with the specific actions given in Appendix A of this Order. In addition, the Board orders Virginia Paving Company, and Virginia Paving Company also agrees, to pay a civil charge in the amount of \$ 74,160.00 within 30 days of the effective date of the Order in settlement of the violations cited in this Order. Payment shall be made by check payable to the "Treasurer of Virginia," delivered to:

Receipts Control
Department of Environmental Quality
Post Office Box 1104
Richmond, Virginia 23218-1104

Either on a transmittal letter or as a notation on the check, Virginia Paving Company shall indicate that this payment is submitted pursuant to this Order and shall include the Federal Identification Number for Virginia Paving Company.

SECTION E: Administrative Provisions

1. The Board may modify, rewrite, or amend the Order with the consent of Virginia Paving Company, for good cause shown by Virginia Paving Company or on its own motion after notice and opportunity to be heard.
2. This Order only addresses and resolves those violations specifically identified herein. This Order shall not preclude the Board or the Director from taking any action authorized by law, including but not limited to: (1) taking any action authorized by law regarding any additional, subsequent, or subsequently discovered violations; (2) seeking subsequent remediation of the facility as may be authorized by law; or (3) taking subsequent action to enforce the Order. This Order shall not preclude appropriate enforcement actions by other federal, state, or local regulatory authorities for matters not addressed herein.
3. For purposes of this Order and subsequent actions with respect to this Order, Virginia Paving Company admits the jurisdictional allegations, but neither admits nor denies the factual findings, and conclusions of law contained herein.
4. Virginia Paving Company consents to venue in the Circuit Court of the City of Richmond for any civil action taken to enforce the terms of this Order.
5. Virginia Paving Company declares it has received fair and due process under the Administrative Process Act, Va. Code §§ 2.2-4000 *et seq.*, and the State Air Pollution Control Law and it waives the right to any hearing or other administrative proceeding authorized or required by law or regulation, and to any judicial review of any issue of fact or law contained herein. Nothing herein shall be construed as a waiver of the right to any administrative proceeding for, or to judicial review of, any action taken by the Board to enforce this Order.
5. Failure by Virginia Paving Company to comply with any of the terms of this Order shall constitute a violation of an order of the Board. Nothing herein shall waive the initiation of appropriate enforcement actions or the issuance of additional orders as appropriate by the Board or the Director as a result of such violations. Nothing herein shall affect appropriate enforcement actions by any other federal, state, or local regulatory authority.
6. If any provision of this Order is found to be unenforceable for any reason, the remainder of the Order shall remain in full force and effect.
7. Virginia Paving Company shall be responsible for failure to comply with any of the terms and conditions of this Order unless compliance is made impossible by earthquake, flood, other acts of God, war, strike, or such other occurrence. Virginia Paving Company shall show that such circumstances were beyond its control and not due to a lack of good faith or diligence on its part. Virginia

Paving Company shall notify the DEQ-NRO Regional Director in writing when circumstances are anticipated to occur, are occurring, or have occurred that may delay compliance or cause noncompliance with any requirement of the Order. Such notice shall set forth:

- a. the reasons for the delay or noncompliance;
- b. the projected duration of any such delay or noncompliance;
- c. the measures taken and to be taken to prevent or minimize such delay or noncompliance; and
- d. the timetable by which such measures will be implemented and the date full compliance will be achieved.

Failure to so notify the Regional Director in writing within 72 hours of learning of any condition above, which the parties intend to assert will result or has resulted in the impossibility of compliance, shall constitute a waiver of any claim of inability to comply with a requirement of this Order.

8. This Order is binding on the parties hereto, their successors in interest, designees and assigns, jointly and severally.
9. This Order shall become effective upon execution by both the Director or his designee and Virginia Paving Company. Notwithstanding the foregoing, Virginia Paving Company agrees to be bound by any compliance date that precedes the effective date of this Order.
10. This Order shall continue in effect until the Director or Board terminates the Order in his or its sole discretion upon 30 days written notice to Virginia Paving Company. Termination of this Order, or any obligation imposed in this Order, shall not operate to relieve Virginia Paving Company from their obligation to comply with any statute, regulation, permit condition, other order, certificate, certification, standard, or requirement otherwise applicable.
11. By its signature below, Virginia Paving Company voluntarily agrees to the issuance of this Order.
12. The undersigned representative of Virginia Paving Company certifies that he or she is a responsible official authorized to enter into the terms and conditions of this Order and to execute and legally bind Virginia Paving Company to this document. Any documents to be submitted pursuant to this Order shall also be submitted by a responsible official of Virginia Paving Company.

And it is so ORDERED this day of April 9, 2008.

Thomas A. Faha

Thomas A. Faha, Regional Director
Department of Environmental Quality
Northern Regional Office

Virginia Paving Company voluntarily agrees to the issuance of this Order.

By: Dennis A. Luzier

Title: District Manager

Date: 4-07-08

Commonwealth of Virginia

~~City~~ County of Fairfax

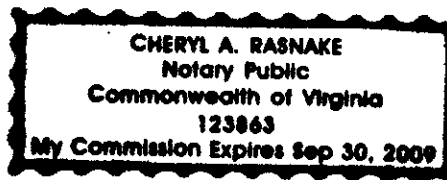
The foregoing document was signed and acknowledged before me this 7 day of
April, 2008, by Dennis A. Luzier, who is
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District Manager of Virginia Paving Company. on behalf of Virginia Paving Company.

Cheryl A. Rasnae

Notary Public

My commission expires: September 30, 2009.



APPENDIX A

Virginia Paving Company shall:

- 1) Proceed with the New Source Review permitting process, and respond to requests for information from DEQ-NRO staff in a timely manner.